

## Department of the Army, DoD

## § 634.33

see DLAR 5720.4; and Air Force, see AFR 110-15.) However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a DD Form 1805 (United States District Court Violation Notice), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms.

(2) A copy of all violation reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) DD Form 1805 will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and app C and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190-29.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator.

(2) Detailed instructions for properly completing DD Form 1805 and con-

tained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the DD Form 1805 (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the DD Form 1805 will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of DD Form 1805 will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service members's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

### SECTION III—STANDARDS AND PROCEDURES FOR PROCESSING DRUNK DRIVERS

#### **§634.33 Training of law enforcement personnel.**

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

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(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36(b).)

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Breath-testing devices must be listed on the approved NHTSA conforming products list published in the FEDERAL REGISTER. All tests must be administered by trained personnel as specified in § 634.36 and must adhere to the procedures described in §§ 634.37 and 634.38 relating to voluntary and involuntary testing.

(d) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(e) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(f) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

#### § 634.34 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested per § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage of alcohol in the person's blood is less than 0.05 percent, presume the person is not under the influence of alcohol.

(2) If the percentage is 0.05 but less than 0.10, presume the person is impaired. This standard may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If the percentage is 0.10 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in paragraph (a) of this section, are percent of weight by volume of alcohol in the blood based on grams of alcohol per 100 milliliters of blood.

(c) The standards in paragraph (a) of this section, may be modified locally to agree with those established by the State or host nation.

(d) These presumptions will be considered with other evidence in determining intoxication.

#### § 634.35 Chemical testing policies and procedures.

(a) Validity of chemical testing. Results of chemical testing are valid under this regulation only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33(c)).

(3) A non-portable breath-testing device approved by the State or host nation is used. For Army and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the FEDERAL REGISTER. (See § 634.33.)

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) Breath-testing device operational procedures. If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Portable breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on a non-portable evidentiary breath-testing device.